IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2880 OF 2005

IN

SUIT NO.1970 OF 2005

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Vivek Bajaj ...Plaintiff

v/s.

Anil Bajaj & ors. ...Defendants

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Mr.D.H.Mehta i/b Mr.V.V.Khema for the Plaintiff.

Ms.Sheetal Chhabria i/b Pankaj Shah for Defendant No.5.

Mr.Chirag Balsara for Defendant No.3.

Defendant No.1 in person.

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CORAM: D.K.DESHMUKH, J.

DATED: 21ST JUNE, 2007

P.C.:

1. This notice of motion is taken out by the Defendant No.1. Plaintiff has filed the suit for partition of the property left behind by the father of the Plaintiff and the Defendant No.1. Plaintiff and Defendant No.1 are brothers.

2. By this notice of motion the Defendant No.1 is claiming interim order in relation to Flat No.2, ground floor of at Kailash Kutir 630, Kharpali road, Mumbai- 400 054. According to the Defendant No.1, this flat was owned by the father. But the Plaintiff has left out this flat from the suit. He has leased out the flat and he is earning money out of this. Defendant No.1, therefore, prays for temporary injunction restraining the Plaintiff from transferring the flat during the pendency of the suit.

3. The Plaintiff does not dispute that the flat was owned by the father. But according to him as in the

record of the society the father had nominated the Plaintiff during the life time of the father, the flat was transferred in the name of the Plaintiff and therefore the Plaintiff is the owner.

4. The submission obviously is devoid of any substance. If the father was the owner of the property, unless there is a registered conveyance, the father will continue to be the owner. Therefore, it prima facie appears that the flat No.2 is one of the properties left behind by the father and therefore, will be subject matter of partition in the suit, and therefore that property needs to be protected. The Plaintiff is, therefore, restrained by an order of temporary injunction from transferring, alienating, or creating third party rights in Flat No.2, Ground Floor at Kailash Kutir 630, Kharpali Road, Mumbai- 400 054 during the pendency of the suit. I have been informed that the Plaintiff has leased out the property. According to the Defendant No.1 the entire flat has been leased out. According to the Plaintiff, only part has been leased out. The Plaintiff is directed to file an affidavit in this court disclosing the document under which the flat was leased out giving full details in

relation to the transaction. The Plaintiff is restrained from either renewing the lease or granting lease in anybody’s favour without seeking leave of the court. Defendant No.1 shall be at liberty to apply for any further reliefs that he may be entitled to in relation to the flat. Motion disposed of.

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